

Nos. 78-328 and 78-333

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In the Supreme Court of the United States

OCTOBER TERM, 1978

JOE HENRY CHAMBERS, PETITIONER

v.

UNITED STATES OF AMERICA

CHARLES THOMAS GRIFFIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES
IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

JOSEPH S. DAVIES, JR.
KAREN A. REBROVICH
Attorneys
Department of Justice
Washington, D.C. 20530

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 13-31)¹ is reported at 579 F. 2d 1104.

JURISDICTION

The judgment of the court of appeals was entered on June 29, 1978. Petitions for rehearing were denied on July

¹All appendix references are to the appendix filed by petitioner Chambers (No. 78-328).

28, 1978 (Pet. App. 32-33). The petitions for a writ of certiorari were filed on August 25, 1978 (No. 78-328) and August 28, 1978 (No. 78-333). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the government's use at trial of co-conspirators' false exculpatory statements denied petitioners either the right of confrontation or a fair trial.

2. Whether Counts II and III of the indictment sufficiently informed petitioners of the charges against them.

3. Whether evidence of prior similar acts was properly admitted.

4. Whether evidence of petitioners' attempt to cover up their fraud was properly admitted.

5. Whether there was sufficient evidence in the record to support petitioner Griffin's conviction on Count V.

6. Whether the trial court properly instructed the jury on the elements of a fraudulent receipt as set forth in 18 U.S.C. 1006.

7. Whether petitioners were improperly denied access to allegedly exculpatory material.

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Arkansas, both petitioners were convicted, together with co-defendant Bill Hansell, of conspiring to defraud and actually defrauding a federally-chartered loan association, in violation of 18 U.S.C. 371 and 1006. Petitioners Griffin and Hansell were also convicted of preparing a false loan application for the purpose of influencing the actions of a loan association, in

violation of 18 U.S.C. 1014 and 2.² Petitioner Griffin received concurrent terms of 15 months' imprisonment on each of the three counts on which he was convicted and was fined a total of \$20,000. Petitioner Chambers also received concurrent terms of 15 months' imprisonment on each of the two counts on which he was convicted and was fined a total of \$7,500. The court of appeals affirmed (Pet. App. 13-31).

The evidence showed that Griffin, Chambers, and Hansell, who were, respectively, president, vice-president, and a branch manager of the Lonoke Production Credit Association (LPCA),³ conspired to defraud the association by making unlawful profits in connection with an LPCA loan transaction. Specifically, petitioners conditioned an LPCA loan on the borrower's purchase of petitioners' land at a substantially inflated price.⁴ Concomitantly, petitioners fraudulently arranged a second LPCA loan to cover the purchase price of the land.

²Count I charged all three defendants with conspiracy to fraudulently receive funds of a federally-insured loan association, in violation of 18 U.S.C. 371 and 1006. Count II charged only petitioner Griffin, Count III charged only petitioner Chambers, and Count IV charged only co-defendant Hansell with defrauding a federally-insured loan association, in violation of 18 U.S.C. 1006. Count V charged all three defendants with preparing a false loan application, in violation of 18 U.S.C. 1014 and 2. The jury found defendants guilty of all counts, except that it acquitted Chambers on Count V. Hansell did not join in petitioners' appeal to the Eighth Circuit.

³The LPCA is a farmer-owned and controlled loan association organized under the Farm Credit System and designed to provide short and intermediate term credit to farmers in the association's federally chartered "territory"—four centrally located Arkansas counties (Pet. App. 16; 1 Tr. 60, 63-64). The LPCA is supervised by the Federal Intermediate Credit Bank of St. Louis, Missouri, whose approval is required for lending money for use outside the association's territory or to an individual borrower beyond the association's "excess loan limit" (1 Tr. 59-60, 109, 119).

⁴The land was purchased by petitioners but held in the name of O.M. Young, Trustee (Pet. App. 17).

Petitioners' conspiracy began in early 1974 when Hansell informed Harold Huntsman, a large farm operator, that his previous application for loans from the LPCA had been denied because the Federal Intermediate Credit Bank in St. Louis had objected to Huntsman's insufficient land holding in LPCA "territory" (II Tr. 173-178). Pursuant to Hansell's instructions, Huntsman began purchasing additional property within LPCA territory in order to obtain LPCA financing, but he again was unable to secure a crop loan for the 1974 season (II Tr. 174-179, 184-188). Subsequently, in July 1974, Hansell approached Huntsman and guaranteed him that the necessary funding would be forthcoming from LPCA if Huntsman would purchase a 2,880-acre cattle farm currently for sale, albeit outside the LPCA territory (II Tr. 185-198; III Tr. 140-142; IV Tr. 61-62, 63-64). Hansell, who told Huntsman that "Mr. Griffin was waiting for [his] decision" (II Tr. 193), additionally promised that Huntsman would lose no money on this deal and that an LPCA "crop loan" would be arranged to cover the purchase price (II Tr. 193-196, 202; IV Tr. 64-65).⁵ Unbeknownst to Huntsman, this 2,880-acre farm had recently been purchased by petitioners from Irving Brauer through a trustee for \$470,000 (Pet. App. 17-18; II Tr. 123-128, 198; IV Tr. 68).

Ultimately, Huntsman and his family agreed to buy the farm for \$634,000, at which time Hansell prepared an LPCA crop loan application for \$513,800, which purported to cover crops to be grown on the 2,880-acre cattle farm (Pet. App. 17-18; II Tr. 193-201). Subsequently, this loan application was approved by the Association Loan Committee (including petitioner Griffin) (I Tr. 104-105), and on July 24, 1974, after Huntsman had signed a contract purchasing the farm from O.M. Young, Trustee,

⁵A crop loan is used to finance the planting and harvesting of a crop and is repaid out of the proceeds of the sale of the crop (I Tr. 114-115; II Tr. 47-48, 93).

and assuming various debts in connection therewith (II Tr. 197-201), Huntsman received two checks constituting the proceeds of the crop loan. One check was issued in the amount of \$121,433.33 made payable to Huntsman and the Bank of McCrory in order to obtain a release of an existing crop lien (I Tr. 110-112; II Tr. 64-65; Pet. App. 18). Hansell refused to give Huntsman the second check, which was issued in the amount of \$386,600,⁶ until Huntsman arranged to give Hansell a cashier's check for \$292,319.18, made out to O.M. Young, Trustee, as down payment on the 2,880-acre farm (Pet. App. 18; II Tr. 196, 202-207; IV Tr. 166-169). Two days later, the trustee paid over \$71,000 each to Griffin and Hansell, and \$20,000 to Chambers (Pet. App. 18; IV Tr. 189-190).⁷

Petitioners' scheme began unraveling in December 1974 when Brauer, the previous owner of the farm, discovered that Huntsman was the current owner of the farm and contacted Huntsman over a past due payment (II Tr. 133-135; III Tr. 32). Huntsman had neither the money nor the inclination to meet this installment of the sales contract and told Brauer to contact Hansell at the LPCA for payment (II Tr. 133; III Tr. 32-35). Thereafter, Huntsman learned of the large difference between Brauer's selling price and his own purchase price (II Tr. 133-135; III Tr. 35-36), and apparently by March 1975 Huntsman also knew that petitioners had been the equitable owners of the 2,880-acre farm (Pet. App. 19).

⁶The difference between the total of the two checks (\$508,033.33) and the loan amount (\$513,800) was attributable to fees and insurance premiums (I Tr. 112-113).

⁷Huntsman's purchase price of \$634,000 was \$164,000 more than the price paid by petitioners to the prior owner Irving Brauer. A total of \$162,000 was divided among the co-defendants as described above, and \$2,000 was retained by Young, who died in 1976 (IV Tr. 185-186, 189-190).

At this time, Hansell approached Huntsman in order to cover up the fraud. Hansell admitted that the LPCA officers had unlawfully made a profit on the loan transaction and told Huntsman that he (Hansell) would do anything if Huntsman would not go to the FBI (Pet. App. 19; III Tr. 48-51; IV Tr. 139-146). Later that day, Jimmie Boggess, a friend of petitioners, called Huntsman and eventually arranged to buy the farm from Huntsman for \$662,000 (Pet. App. 19; III Tr. 52-60; IV Tr. 67-70). This sale was consummated in Young's office with petitioner Chambers, Young, Boggess, and Huntsman present (Pet. App. 20; III Tr. 63-65). Petitioners and Hansell supplied the purchase money and subsequently induced Boggess to give a false statement to the government investigators concerning the circumstances of the purchase (Pet. App. 20; VI Tr. 46-61).

ARGUMENT

1. Petitioners raise several questions (Chambers Pet. 11-19; Griffin Pet. 14-17) concerning the use at trial of the co-defendants' written and signed statements given to government investigators regarding the Huntsman loan-sale transactions. These parallel statements, which were redacted to delete any reference to a co-defendant before being admitted into evidence, essentially told the same false exculpatory story (Pet. App. 21; V Tr. 131-188; Gov't Exhs. 63, 64, 65, 66, 67, 68). Thus, each defendant^{*} claimed that Boggess had found a farm for sale and had invited him to participate in the speculative venture, which invitation was accepted. Thereafter, according to the defendants' story, each defendant received his proportionate share of the profits when Boggess and trustee Young arranged for the sale to Huntsman. Each

defendant disclaimed more than a cursory knowledge of the specifics of the Huntsman loan and denied that the loan had any connection to the sale of property. At trial, Boggess and Hansell took the witness stand and admitted that their statements were false, and Boggess testified that the three defendants had supplied him with the false exculpatory story subsequently given to the government investigators (VI Tr. 38-62; VIII Tr. 21, 144-145, 156-157).

a. Petitioners contend (Chambers Pet. 11-14; Griffin Pet. 14-16) that this Court's opinion in *Bruton v. United States*, 391 U.S. 123 (1968), mandates a new trial here. However, *Bruton* involved the admission of a defendant's confession that "powerfully" and "devastating[ly]" incriminated his co-defendant, who was also on trial. *Id.* at 135-136. Since the defendant whose confession was admitted did not testify, this Court held that the co-defendant's rights under the Confrontation Clause of the Sixth Amendment had been violated. *Id.* at 128. In contrast, the statements admitted here were exculpatory in nature, see *United States v. Wingate*, 520 F. 2d 309, 313-314 (2d Cir. 1975), cert. denied, 423 U.S. 1074 (1976); *United States v. Burke*, 495 F. 2d 1226, 1232-1233 (5th Cir. 1974); *United States ex rel. Nelson v. Follette*, 430 F. 2d 1055 (2d Cir. 1970), and, moreover, were redacted to delete any reference to a co-defendant, thereby avoiding the *Bruton* problem. See *Bruton v. United States*, *supra*, 391 U.S. at 133-134 n.10; accord, e.g., *United States v. Dady*, 536 F. 2d 675 (6th Cir. 1976); *United States v. Alvarez*, 519 F. 2d 1052 (3d Cir.), cert. denied, 423 U.S. 914 (1975); *United States v. Trudo*, 449 F. 2d 649 (2d Cir.), cert. denied, 405 U.S. 926 (1972).

^{*}Boggess gave the same story to investigators, and his statement in unredacted form was admitted into evidence during Boggess' direct testimony on behalf of the government (VI Tr. 37-58; Gov't Exh. 69).

Furthermore, petitioners cannot demonstrate any cognizable prejudice from the admission of their statements. Boggess and Hansell testified at trial, which rendered their complete statements fully admissible. *Nelson v. O'Neil*, 402 U.S. 622 (1971); *United States v. Smith*, 451 F. 2d 595 (9th Cir. 1971); *United States v. Sims*, 430 F. 2d 1089 (6th Cir. 1970). Those statements tracked and interlocked with Chambers' and Griffin's false accounts, which were at least admissible against their respective makers. Thus, the only prejudice possibly suffered by Chambers stems from the spillover effect of Griffin's exculpatory statement, the substance of which had already been properly admitted against Chambers in the form of three other statements including his own. Similarly, of course, Griffin's alleged prejudice emanates from the insignificant cumulative effect of Chambers' exculpatory statement. In such circumstances, petitioners' Sixth Amendment claim is without merit.⁹ *Mack v. Maggio*, 538 F. 2d 1129 (5th Cir. 1976); *United States v. Shaw*, 518 F. 2d 1182 (4th Cir. 1975); *United States ex rel. Stanbridge v. Zelker*, 514 F. 2d 45 (2d Cir.), cert. denied, 423 U.S. 872 (1975); *United States v. Spinks*, 470 F. 2d 64 (7th Cir.), cert. denied, 409 U.S. 1011 (1972); *United States ex rel. Duff v. Zelker*, 452 F. 2d 1009 (2d Cir. 1971), cert. denied, 406 U.S. 932 (1972).

⁹Nor is there any merit to petitioners' contention (Chambers Pet. 17-18; Griffin Pet. 16) that the district court erred in failing to charge the jurors concerning the limited admissibility of the redacted statements. The co-defendants' statements were read to the jury in rapid succession (V Tr. 159-187). After the first statement was admitted, the judge correctly instructed the jury that such a statement was "received only as to the defendant whose statement it is" (V Tr. 164). Petitioners did not request that this warning, which was applicable to all three statements, be repeated when their statements were introduced into evidence moments later. Moreover, the court had previously given a similar instruction and subsequently reiterated this admonition in its charge to the jury (II Tr. 181-184; XI Tr. 20).

b. Petitioner Chambers contends (Pet. 12-13) that the prosecutor committed prejudicial error in his opening statement by summarizing portions of the co-defendants' unredacted statements (Opening Tr. 22-30). However, as the court of appeals noted (Pet. App. 20-21), petitioners never objected to the prosecutor's opening argument or moved for a mistrial, and they are thus deemed to have waived their objection. *United States v. DeRosa*, 548 F. 2d 464, 471-472 (3d Cir. 1977); *United States v. Lawson*, 483 F. 2d 535, 538 (8th Cir. 1973), cert. denied, 414 U.S. 1133 (1974). In any event, this alleged error was harmless beyond a reasonable doubt. As already stated, the unredacted statements of Boggess and Hansell were admissible, and Chambers' own statement was admissible against himself. Griffin's statement was not admissible against Chambers, but Griffin's own counsel "in opening statement admitted nearly all of the facts referred to in Griffin's statement" (Pet. App. 21; see Opening Tr. 40-44). Given the cumulative, interlocking and exculpatory nature of the statements, the strength of the prosecution's case, and the trial court's curative charge,¹⁰ the prosecutor's remarks do not constitute plain error. See *Brown v. United States*, 411 U.S. 223-230-232 (1973); *Schneble v. Florida*, 405 U.S. 427 (1972).

c. Petitioners next argue (Chambers Pet. 14-17; Griffin Pet. 16-17) that the defendants' written statements were not made in furtherance of the conspiracy and are therefore inadmissible hearsay. However, Fed. R. Evid. 801(d)(2)(A) provides that "[a] statement is not hearsay * * * offered against a party and is * * * his own statement." Since the defendants' own statements were admitted solely against the respective declarant (V Tr. 164; XI Tr. 20), petitioners' claim is unavailing. See, e.g., *United States v. Matlock*, 415 U.S. 164, 172 & n.8 (1974).

¹⁰The court instructed the jurors to consider only the evidence adduced at trial and not the lawyers' statements (XI Tr. 3-4, 6).

2. Petitioners further contend (Chambers Pet. 19-24; Griffin Pet. 7-9) that neither Count II (Griffin) nor Count III (Chambers) sufficiently charged a violation of 18 U.S.C. 1006. However, those counts (Pet. App. 7-8) fairly informed petitioners of the charges against them by concisely alleging the elements of the crime and the pertinent underlying facts including the time, place, manner and perpetrators of the fraudulent transaction. See Fed. R. Crim. P. 7(c). Since the indictments enabled petitioners to prepare a defense to the specified charges while adequately protecting petitioners from future prosecutions for the same offense, the court of appeals correctly rejected petitioners' claims on this point (Pet. App. 21-22). *Hamling v. United States*, 418 U.S. 87, 117 (1974).

Although, as petitioner Chambers points out (Pet. 23-24), the Seventh Circuit once dismissed a four-count indictment which included a Section 1006 count similar to those challenged here (*United States v. Quinn*, 365 F. 2d 256 (7th Cir. 1966)), the rationale of that case, which was decided before *Hamling v. United States*, *supra*, is not readily discernible.¹¹ More importantly, the Seventh Circuit subsequently construed *Quinn* to require only that a Section 1006 indictment not "charg[e] and convic[t] an individual for no more than maladministration, mistake or ineptitude." *United States v. Kahn*, 381 F. 2d 824, 832 (7th Cir.), cert. denied, 389 U.S. 1015 (1967). Since Counts II and III correctly averred the underlying facts and the elements of the charge, including that petitioners had acted with an "intent to defraud" (Pet App. 7-8), the *Quinn* rationale is inapplicable here. *United States v.*

¹¹The court in *Quinn* noted, *inter alia*, that one of the Section 1006 counts failed to aver that the defendant had received money in connection with the bank transaction and also that the entire indictment was invalid because of misjoinder problems. 365 F. 2d at 262-264.

Chenaur, 552 F. 2d 294, 300-301 (9th Cir. 1977) (expressly rejecting *Quinn*).

3. Petitioners also argue (Chambers Pet. 24-32; Griffin Pet. 12-13) that the trial judge abused his discretion in allowing the prosecution to introduce into evidence other similar criminal acts by the petitioners. After three pretrial hearings concerning the admissibility of such evidence, the district court limited the prosecution to those prior acts that involved a fraudulent loan transaction closely analogous to that charged in the indictment (Pet App. 25). Thus, the testimony challenged by petitioners clearly and convincingly demonstrated that on at least two other occasions petitioners had defrauded LPCA by deceptively financing the profitable purchase or sale of land in which they had an interest (Pet App. 25; VI Tr. 177-214, 221-227). Such similar acts were properly admitted by the district court to prove petitioners' knowledge and intent—the issues most strenuously contested by petitioners at trial. Fed. R. Evid. 404(b); *e.g.*, *United States v. Crockett*, 534 F. 2d 589, 604-605 (5th Cir. 1976); *United States v. Maine*, 413 F. 2d 214 (7th Cir. 1969), cert. denied, 396 U.S. 1001 (1970); 2 *Weinstein's Evidence*, para. 404 [09], at 404-50 to 404-53 (1977). Moreover, given the strong probative worth of this evidence, the district court did not abuse its broad discretion under Fed. R. Evid. 403 in admitting the similar acts testimony. See, *e.g.*, *United States v. Maestas*, 554 F. 2d 834, 836 (8th Cir.), cert. denied, 431 U.S. 972 (1977); *United States v. Fairchild*, 526 F. 2d 185, 189 (7th Cir. 1975) (Stevens, J.), cert. denied, 425 U.S. 942 (1976)¹².

¹²Petitioner Chambers erroneously suggests (Pet. 24-28) that a conflict exists among the courts of appeals because some of the circuits have concluded that their prior precedent is consistent with Rule 404(b) while others may have been more stringent about other crimes evidence before Rule 404(b) codified the inclusionary approach to the issue. See *United States v. Benedetto*, 571 F. 2d 1246,

4. Petitioners also challenge (Chambers Pet. 19, 31; Griffin Pet. 11) the admission of testimony concerning their repurchase of the Huntsman farm. However, evidence of the "buy back", which was prompted by petitioners' desire to keep Huntsman from going to the authorities, was certainly relevant to show petitioners' knowledge and intent. See Fed. R. Evid. 401. Indeed, in connection with the repurchase, defendant Hansell confessed his wrongdoings to Huntsman (Pet App. 19; III Tr. 48-51; IV Tr. 139-146), while Boggess' testimony convincingly evidenced petitioners' knowing participation in the fraudulent transaction (Pet. App. 19-20; VI Tr. 30-67). Finally, in an excess of caution, the trial judge repeatedly admonished the jurors that they could only consider this evidence with regard to the substantive counts (III Tr. 20-32; 52-53; V Tr. 27; VI Tr. 44, 66). Accordingly, the court of appeals correctly concluded (Pet. App. 23-24) that the district court had not abused its broad discretion in admitting the repurchase evidence. Fed. R. Evid. 401, 403; see, e.g., *United States v. Baumgarten*, 517 F. 2d 1020, 1027-1030 (8th Cir.), cert. denied, 423 U.S. 878 (1975).

5. Next, petitioners contend (Chambers Pet. 32-34; Griffin Pet. 9-11) that there was insufficient evidence to support a conviction on Count V of the indictment regarding the filing of a false loan application for the purpose of influencing LPCA in violation of 18 U.S.C. 1014 and 2. At the outset, we note that petitioner Chambers was acquitted of this charge and has no cause for complaint. Moreover, the evidence adduced at trial amply justified the district court's decision to submit

1248 (2d Cir. 1978). Moreover, none of the cases cited by petitioner, including *United States v. Beechum*, 555 F. 2d 487 (5th Cir. 1977), reh. en banc granted, No. 76-1444 (Nov. 3, 1977), is in conflict with the result here, which involved convincing proof of similar fraudulent schemes.

Count V to the jury regarding all defendants. The Huntsman loan application, which was prepared by Hansell, stated that the borrower sought a "crop loan." (Pet. App. 17-18; II Tr. 193-201; Gov't. Exh. 7). In actuality, of course, the proceeds of the crop loan¹³ were used to pay for the 2,880-acre cattle farm which Huntsman had been forced to purchase by petitioners as a condition precedent to any further LPCA financial assistance. Indeed, Hansell would not disburse the proceeds of the loan until Huntsman had arranged for the transfer of a \$292,000 cashier's check to him for the purchase of the property (II Tr. 202-207). The evidence further showed that petitioners had denominated the transaction as a crop loan to avoid various purchase loan (mortgage) approval requirements of the bank, such as appraisals and supervisory bank approval of an out-of-territory purchase loan (I Tr. 115, 119-120; II Tr. 22-23). Finally, Griffin, who knew that the loan was to be used to cover the purchase of the property (II Tr. 193), sat on the loan committee that approved Huntsman's crop loan application (Pet. App. 17, 23). In sum, when viewed most favorably to the government, the evidence strongly supported the jury's finding that Griffin had violated Section 1014.

6. Petitioner Chambers raises several objections (Pet. 34-39) to the district court's jury instructions concerning the phrase "intent to defraud" found in Section 1006 (XI Tr. 23-24). Specifically, petitioner claims that the charge would have permitted the jury to convict him for an

¹³Petitioners argue that the bank does not force the recipient of a crop loan to use those proceeds for crop production and that therefore the loan application was not false. However, here petitioners forced Huntsman to use his crop loan to purchase the farm and there was substantial evidence that a crop loan is governed by different regulations from a "real estate" loan and cannot be used to purchase real estate—facts which petitioners obviously knew from their experience as bank officers (Pet. App. 17 n.2; I Tr. 114-116, 119; II Tr. 47-48, 93-94; IV Tr. 9-11, 95).

unknowing violation of bank regulations. But the trial judge correctly informed the jurors that in evaluating the issue of intent they could consider petitioners' "failure to comply with the applicable regulations and bylaws of [LPCA] which were known to said defendant * * *" (XI Tr. 24; emphasis supplied). Equally unavailing is petitioners' implication (Pet. 37) that in order to convict, the jurors had to find that the petitioners' fraud ultimately caused a financial loss. *United States v. Hykel*, 461 F. 2d 721, 725 (3d Cir. 1972); see *United States v. Leopowitch*, 318 U.S. 702, 704 (1943). Finally, the district court's use of the word "benefit" in this portion of the charge is certainly unobjectionable, since Section 1006 uses "benefits" in broadly defining the coverage of that provision. As the court of appeals concluded, the trial judge carefully and correctly instructed the jurors regarding fraud as defined in Section 1006. See *United States v. Hykel*, *supra*, 461 F. 2d at 724; *Beaudine v. United States*, 368 F. 2d 417, 420 (5th Cir. 1966).

7. Lastly, petitioners' contention (Chambers Pet. 39-40; Griffin Pet. 13-14) concerning the nondisclosure of certain LPCA minutes is without merit. The allegedly exculpatory material consisted of a supervisory bank officer's opinion based on personal surmise (see VI Tr. 118-119) that no criminal violations had occurred (VI Tr. 116-117). Such an opinion was inadmissible at trial. See Fed. R. Evid. 701. Moreover, the record unequivocally reflects that the government had neither possession nor knowledge of this particular portion of the minutes, which were equally accessible to defense counsel (VI Tr. 25-28, 113-141). Furthermore, defense counsel (as well as the prosecution) had the benefit of this material nine days before the trial concluded. In such circumstances, petitioners' claim based on *Brady v. Maryland*, 373 U.S. 83 (1963), is frivolous.

CONCLUSION

The petitions for a writ of certiorari should be denied.
Respectfully submitted.

WADE H. MCCREE, Jr.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

JOSEPH S. DAVIES, JR.
KAREN A. REBROVICH
Attorneys

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